

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER CHARLES CLARK,

Plaintiff,

v.

FIDEL GUTIERREZ, et al.,

Defendants.

Case No. 1:21-cv-01386-JLT-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE  
OPPOSITION OR STATEMENT OF NON-  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT  
WITHIN THIRTY DAYS

Christopher Charles Clark ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983, which includes state law claims.

On April 10, 2023, Defendants filed a motion for summary judgment "on the grounds that Plaintiff Clark has failed to exhaust available administrative remedies on his claims as required by the Prison Litigation Reform Act (PLRA) 42 U.S.C. § 1997e(a), and well as applicable California state law, and that the claims are therefore barred and must be dismissed." (ECF No. 33, pgs. 1-2) (footnote omitted). Defendants filed an amended notice and motion on April 13, 2023. (ECF No. 39). Plaintiff was required to file an opposition or a statement of non-opposition to the motion within twenty-one days, Local Rule 230(l), but did not do so.

Local Rule 230(l) provides that the failure "to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions." While a motion for summary judgment cannot be granted

1 by default, Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013), the Court does have other  
2 options when a party fails to respond. For example, if Plaintiff fails to respond, the Court may  
3 treat the facts asserted by Defendants as “undisputed for purposes of the motion.” Fed. R. Civ. P.  
4 56(e)(2). Alternatively, if Plaintiff fails to oppose the motion or file a statement of non-  
5 opposition, the Court may recommend that this case be dismissed for failure to prosecute and  
6 failure to comply with a court order.

7 However, the Court will not impose any sanctions or treat the facts asserted by Defendants  
8 as undisputed at this time. Instead, the Court will give Plaintiff one more opportunity to file a  
9 response.

10 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 11 1. Within thirty days from the date of service of this order, Plaintiff shall file an  
12 opposition or a statement of non-opposition to Defendants’ motion for summary  
13 judgment.
- 14 2. If Plaintiff fails to comply with this order, in ruling on Defendants’ motion for  
15 summary judgment the Court may treat the facts asserted by Defendants in their  
16 motion for summary judgment as undisputed. Alternatively, the Court may  
17 recommend that this case be dismissed for failure to prosecute and failure to  
18 comply with a court order.

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20 IT IS SO ORDERED.

21 Dated: May 22, 2023

22 /s/ Eric P. Grogg  
23 UNITED STATES MAGISTRATE JUDGE  
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